



November 21, 2001

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2001-5407

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155154.

The Texas Department of Human Services (the "department") received a request for several categories of information related to child care centers. You advise that a portion of the requested information has been released to the requestor. You claim that some of the remaining requested information, submitted as Attachments B, C, and D, is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code may require you to withhold the social security numbers in Attachment B. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No 622 (1994). It is not apparent to this office that the department either obtained or maintains these social security numbers pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that the social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal

penalties for the release of confidential information. Therefore, prior to releasing the social security numbers, the department should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Next, you argue that there is information in Attachment C that is excepted from disclosure under section 552.136 of the Government Code. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act, which makes access device numbers confidential. Senate Bill 694 was passed on May 14, 2001, and became effective when it was signed by the Governor on May 26, 2001. It provides, in relevant part, as follows:

**Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.**

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). Thus, we agree that you must withhold the routing transit numbers and customer account numbers pursuant to section 552.136.

Lastly, you claim that the documents in Attachment D are excepted from disclosure pursuant to section 552.101 in conjunction with sections 12.003 and 21.021 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning, persons applying for or receiving assistance* if the information is directly or indirectly derived from the records, papers, files, or

communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a) (emphasis added); *see also id.* § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs); Open Records Decision Nos. 584 (1991), 166 (1977).

Sections 12.003 and 21.012 make confidential information relating to applicants for and recipients of public assistance. *See* Open Records Decision No. 584 at 3 (1991). You inform this office that the "children listed are *indirect* applicants for the child and adult care food program," which "assists in providing nutritious meals and snacks for children in child care *by giving the child care provider* a per child subsidy for food." [Emphasis added.] You assert that, "in applying for the child and adult care food program, *the center operator is applying for nutrition assistance* to benefit the children in his or her care." [Emphasis added.] We have considered your representations, but are not persuaded that these children are applicants for or recipients of public assistance for purposes of sections 12.003 and 21.012 of the Human Resources Code. Therefore, the department may not withhold the submitted information regarding these children under section 552.101 of the Government Code.

In summary, the social security numbers may be confidential under section 552.101 in conjunction with federal law. The department must withhold the routing and account number information under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

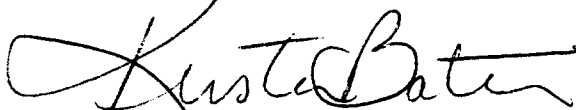
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 155154

Enc. Submitted documents

c: Mr. Charles Flowers  
Child Care Services  
P.O. Box 71  
Lufkin, Texas 75902  
(w/o enclosures)